

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508 -- Room 7008
Cincinnati, OH 45201

Date: APR 25 2003

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. #
[REDACTED]

Contact Telephone Numbers

Phone

FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

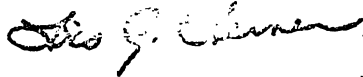
As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice

Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230. If we do not hear from you within the time specified, this will become our final determination.

Sincerely, -



Director, Exempt Organizations

Enclosures: 3

Enclosure I
Publication 892
Form 6018

Copy to [REDACTED]

Enclosure I

Issue

Does the applicant, who is formed to provide a variety of services in the [REDACTED] area of [REDACTED], qualify for exemption under section 501(c)(4) of the Internal Revenue Code?

Facts

You were incorporated on [REDACTED], in the State of [REDACTED]. Your Articles of Incorporation indicate that you were formed for the following purposes:

- To take title to certain real property and easement rights within [REDACTED].
- To assume and perform certain maintenance responsibilities as may be provided by declaration, deed, contract or other agreement.
- To provide an entity for the furtherance of the common interests of the Owners and Operators within the [REDACTED].

Your Bylaws indicate that every property owner in the area you serve is eligible to become a member with the exception of individual owners of condominium units or single-family dwellings. However, the condominium operators and the community, homeowners' or other owners' associations that comprise the condominium units and single-family dwellings may become members.

You state on page 2 of Form 1024 that you were formed for the purpose of managing, controlling, maintaining, repairing, improving and protecting the desirability and attractiveness of the land located in [REDACTED] for the mutual benefit of the community.

Your letter dated [REDACTED], indicates that you provide a variety of services in the [REDACTED] area of [REDACTED]. These services include roadwork, facilities maintenance, landscaping, open space planning and maintenance, sidewalks, street cleaning, streetlights, public safety policing services, public transportation services and building architectural controls. The [REDACTED] area is divided into [REDACTED] lots and comprises approximately [REDACTED] acres. The [REDACTED] area includes hotels and commercial properties. It also includes condominium projects on [REDACTED] of the lots and single-family dwellings on [REDACTED] of the lots. You currently have [REDACTED] members who represent some of the hotel owners, shopping center owners, condominium projects and the developer. The [REDACTED] remaining owners, condominium operators and/or associations in the [REDACTED] area are not members.

Your letter dated [REDACTED], indicates that another condominium project has become a member. You now have [REDACTED] members.

Form 1023 indicates that your income is derived from member assessments and property owner assessments that were established through resort Covenants, Codes and Restrictions that were recorded against the fee simple title to the land. Your primary expenditures are for wages, utilities, communications, security services, taxes, insurance, materials, supplies, repairs, maintenance, professional services, and transportation services.

Law

Code section 501(c)(4) provides, in part, for the exemption of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Income Tax Regulations section 1.501(c)(4)-1(a)(2) provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one that is operated primarily for the purpose of bringing about civic betterments and social improvements.

In Revenue Ruling 72-102, 1972-1 CB 149, an organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks and common areas for use of the residents in the development was determined to qualify for exemption under section 501(c)(4) of the Internal Revenue Code.

Revenue Ruling 74-99, 1974-1 CB 131, provides additional guidance for homeowners' associations regarding the definition of "community", the exterior maintenance of private residences and the use of facilities by the public.

Revenue Ruling 75-199, 1975-1 CB 160, describes a nonprofit organization that restricts its membership to individuals of good moral character and health belonging to a particular ethnic group residing in a stated geographical area and provides sick benefits to members and death benefits to their beneficiaries. The organization's income is derived principally from membership dues. It was determined that the organization is not exempt under section 501(c)(4) of the Internal Revenue Code.

Revenue Ruling 80-63, 1980-1 CB 116, clarifies Revenue Ruling 74-99, 1974-1 CB 131. It provides answers to specific questions as to whether the conduct of certain activities will affect the exempt status under section 501(c)(4) of the Internal Revenue Code of otherwise qualifying homeowners' associations.

Revenue Ruling 81-116, 1981-1 CB 333, describes an organization that provides and maintains free off-street parking to anyone visiting a city's downtown business district. The organization's membership includes local merchants and businessmen, churches, civic organizations, and other interested individuals and organizations. The organization receives income from contributions and membership dues. The organization qualifies for exemption under section 501(c)(4) of the Internal Revenue Code.

Application of Law

You are like the organization in Revenue Ruling 75-199, 1975-1 CB 131. Your membership is limited to the representatives of property owners in a specific area. Your only income is from member assessments and property owner assessments. An organization of the type described in the ruling is essentially a mutual, self-interest type of organization. Its income is used to provide direct economic benefits to members and any benefit to the larger community is minor and incidental. Where the benefit from an organization is limited to that organization's members (except for some minor and incidental benefit to the community as a whole), the organization is not operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) of the Code.

You are not like the organization described in Revenue Ruling 81-116, 1981-1 CB 333 that qualified for exemption under section 501(c)(4) of the Internal Revenue Code. In the ruling the organization's membership encompassed a broad spectrum of the community, thus insuring that the organization would not be operated to benefit any particular merchant or business. Your membership is restricted to the representatives of the various owners of commercial and residential properties in the [REDACTED] area. The organization in the ruling receives income from contributions and membership dues. Your income is derived from member assessments and property owner assessments that were established through resort Covenants, Codes and Restrictions that were recorded against the fee simple title to the land. Excess revenues are returned to the members and property owners at the end of each year. There is no assurance that you are not operated to benefit particular merchants or businesses either in the composition of your membership or the funding of your activities.

Applicant's position

Your letter dated [REDACTED], outlines your position with regard to your qualification for tax exemption under section 501(c)(4) of the Internal Revenue Code.

You state that unlike the organization in Revenue Ruling 75-199, 1975-1 CB 160, the [REDACTED] area is not limited for the exclusive use and benefit of a specific group. It is not a gated resort but open to

all guests, residents and the community. The common areas within the resort that you maintain are used not only by resort guests and residents but also community members on a daily basis who frequent and use the various amenities and facilities that the resort offers and participate in the various community events.

You state that you are similar to the organization in the ruling in that membership is not open to the community. Membership is only open to properties in the [REDACTED] area. Members guide the direction of maintenance and beautification of the resort common areas. The overall condition of the resort affects the community, as many of its members are employees of the various businesses in the resort. But the difference is that although membership is limited, the general meeting is open to any interested party who wishes to attend.

You state that you are like the organization in Revenue Ruling 81-116, 1981-1 CB 333 because you maintain the common areas inclusive of roadways, walkways, street lights, signage, drainage systems and infra-structure of the resort that benefit not only the guests and residents staying at the resort, but also members of the community that go to the beach, various hotels, restaurants, spas, medical centers, shopping centers and museum businesses, discovering historical sites and participate and attend the various events held in the resort.

You state that your funding is also similar to that of the organization in the ruling. You are funded by the different properties in the [REDACTED] area. Reimbursements are collected from each property for common area maintenance, security and the operation of the trolley system. Any annual excess reimbursements are refunded to the properties each year.

You state that you are different from the organization in the ruling because membership is not open to the public. Membership is only open to all properties in the [REDACTED] area. But, similarly, all interested parties can attend and participate in your annual general meeting.

In summary and conclusion you state that you serve a geographical area similar to a municipality, provide many public services similar to the public works department of a municipality, benefit the general community of [REDACTED] in crime control and reduction through effective security patrols in coordination with local police, are a non-gated open resort which welcomes the general public at no charge, protect the lagoons, ocean and beaches from pollution, provide highway beautification and maintenance, maintain views and vistas to the ocean from public highways for the benefit of the general public, control the architectural development of the resort to enhance the ambiance of the community, operate a free transportation service to mitigate traffic congestion, welcome all interested people into your meetings, service all entities without discrimination relative to payment, work in a fiduciary manner for the benefit of the common good, and do no

retain a profit at the end of each year to benefit any particular organization or member.

Your letter dated [REDACTED], provides additional information regarding your position on your qualification for exemption under section 501(c)(4) of the Internal Revenue Code.

You state that you are like the organization in Private Letter Ruling [REDACTED]. The functions and responsibilities cited in the ruling are exactly the functions and responsibilities performed by you. All of the functions and services you provide are directed exclusively to civic betterment and the social welfare of the community of [REDACTED]. You don't perform any maintenance on or expend any funds for the direct benefit of any individual hotel, condominium, single family or commercial property. You don't own any commercial property, condominium or hotel property. While some of your members may represent commercial properties, the assessments are not expended for the generation of profit for these commercial entities. Any benefit to your members is incidental to the primary purpose of the organization, which is to maintain and enhance the entire development of the [REDACTED] community. [REDACTED] is an open community not a gated community. The general public is free to utilize the common facilities without charges or fees for public use of these facilities.

You state that you are like the organization in Revenue Ruling 72-102, 1972-1 CB 149 because all owners of property in the [REDACTED] area have been invited to join you to include the organizations that represent the various condominium projects in your area. You indicate that under local zoning ordinances condominiums are not considered to be commercial use property.

You state that you do not believe that the reference to the term "homeowners association" in Revenue Ruling 72-102, 1972-1 CB 149, Revenue Ruling 74-99, Revenue Ruling 74-99, 1974-1 CB 131 and Revenue Ruling 80-63, 1980-1 CB 116 was intended to exclude all other owners associations but serves as a point of reference for owners associations which may include other owners and uses within its definition of community. You believe that [REDACTED] and your organization meet the three criteria outlined in Revenue Ruling 74-99, 1974-1 CB 131. In summary, you state that Revenue Ruling 74-99, 1974-1 CB 131 parallels the activities and responsibilities of your organization. Although you are not exactly like a homeowners association, you are similar in that you are a geographical unit comprising several subdivisions of owners of different properties in the [REDACTED] area. Your owners consist of commercial properties such as hotels, shopping center and a business center, and residential properties such as condominiums and single-family home subdivisions. You do not conduct any activities that are directed to the exterior maintenance of these individual properties. The property owners maintain their own properties. However, you do own and maintain only the common areas or facilities such as roadways, sidewalks and street lights with access to, and the use and enjoyment of which, is extended

to members of the general public and is not restricted to members of the association.

You state that you bear no resemblance to the organization in Revenue Ruling 75-199, 1975-1 CB 131. Your activities are not for the sole benefit of your members but extended to benefit the [REDACTED] area. The assessments are an expense to your members and you do not produce a sole benefit to your member properties. Your assessments are like a tax against your members for providing public maintenance services and improvements to the community. You may also control and restrict your members from actions, which would otherwise hurt the entire community through its enforcement powers in the covenants, codes and restrictions. The only benefit your members derive is the privilege of paying for the delivery of what would otherwise be public costs for streets and sidewalks paid for by the taxpayers of [REDACTED] County.

You state that you are not like the organization in Revenue Ruling 81-116, 1981-1 CB 333. Membership is open to all owners of [REDACTED]. You currently have [REDACTED] members but are actively seeking membership of all the owners of [REDACTED], which should comprise the broadest spectrum of the community. Also your meetings are open to any concerned individual or organization that has an interest in the [REDACTED] area. (Not limited to [REDACTED] owners). You cannot be more open than you are to the public's input.

You state that the Service should keep in mind that the community includes commercial activities, from the Mom and Pop grocery store to the public golf course. Your function is fiduciary and not designed or intended to benefit any particular member. All members participating fully insures that no one member derives a benefit not derived by the entire community.

Service's response to applicant's position

Your letters dated [REDACTED] and [REDACTED] assert that you meet the requirements of section 501(c)(4) of the Internal Revenue Code because you are operated exclusively for the promotion of social welfare. Based on the information submitted, it is our position that you are not operated exclusively for the promotion of social welfare and as a result, tax exemption under section 501(c)(4) is precluded.

Like the organization in Revenue Ruling 75-199, 1975-1 CB 131, that didn't qualify for exemption under code section 501(c)(4), the benefits derived from your activities are limited to your members, except for some minor and incidental benefit to the public and the [REDACTED] area as a whole.

Unlike the organization described in Revenue Ruling 81-116, 1981-1 CB 333 that qualified for exemption under code section 501(c)(4), your membership is restricted to the representatives of the various owners of commercial and residential properties in the [REDACTED] area.

That organization receives income from contributions and membership dues. Your income is derived from member assessments and property owner assessments that were established through resort Covenants, Codes and Restrictions that were recorded against the fee simple title to the land. Excess revenues are returned to the members and property owners at the end of each year. There is no assurance that you are not operated to benefit particular merchants or businesses either in the composition of your membership or the funding of your activities.

Revenue Ruling 72-102, 1972-1 CB 149, Revenue Ruling 74-99, 1974-1 CB 131 and Revenue Ruling 80-63, 1980-1 CB 116 are applicable to organizations that are comprised of individuals owning homes in a particular area. You are not like the organizations described in these rulings. Your membership is comprised of representatives of some of the property owners in a mixed commercial/residential development. These rulings are not applicable in determining your exempt status under section 501(c)(4) of the Internal Revenue Code.

A private letter ruling is a written statement issued to a taxpayer by the Service that interprets and applies the tax law to that taxpayer's specific set of facts. Although indicative of Service policy, private letter rulings are limited in application to the taxpayer making the request and may not be relied on, used, or cited as precedents by taxpayers, or Service personnel in the disposition of other cases. Further, the membership of the organization in Private Letter Ruling [REDACTED] is composed of the owners of detached and semi-detached homes, condominium units and apartment units within a town. This ruling doesn't in any way indicate the Service's policy regarding a property owner's association like yours that is composed of the representatives of some of the property owners in a mixed commercial/residential development.

Conclusion

Based on the facts presented above, we hold that you do not meet the requirements for tax exemption under section 501(c)(4) of the Internal Revenue Code.

Based on the facts you have provided in your application for recognition of exemption, we are not able to conclude that you are organized and operated exclusively for the promotion of social welfare.

Accordingly, you do not qualify for exemption under section 501(c)(4) of the Internal Revenue Code.